

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE AND CLAIMS SUBCOMMITTEE ON DISTRICT COURT FUNDING**

**Call to Order:** By **SEN. JOHN ESP**, on February 18, 2003 at 5:00 P.M., in Room 350 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Sen. Edward Butcher (R)  
Sen. John Esp (R)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Linda Nelson (D)  
Sen. Jerry O'Neil (R)  
Sen. Joseph (Joe) Tropila (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Lynn Zanto, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: SB134, 12/27/2002  
Executive Action:

##### **Discussion:**

**CHAIRMAN JOHN ESP** asked for discussion on **SB 218**.

**SEN. JEFF MANGAN** advised they worked with the **Department of Administration** on portions of the bill. **SEN. MIKE WHEAT** was working on language and procedural changes in **SB 218**. He stated he was working on the fiscal side of the bill. The Budget Office was working on a temporary fiscal note for three new employees

and state assumption of the public defender system . There would be amendments to the bill by Thursday evening.

**SEN. WHEAT** advised they do not have any amendments drafted yet, but he wanted to hit the highlights of some of the changes in **SB 218**. There seems to be a consensus to develop a statewide public defender system so that they can deal with indigent costs. He discussed section 2-15-1020 on the duties and rules of the appellate defender commission. **EXHIBIT(fcs36a01)** This is identical to new section 1 of **SB 218**. They want to merge the appellate defender commission with the public defender commission so that it is statewide. The public defender commission would take care of assigned council for indigent defense and the appellate program. The appellate defender commission is already attached for administrative purposes to the **Department of Administration**. Section 1 of **SB 218** contemplates creating a commission for the public defender system and their thought is if they blend the two then the commission is already in place. This commission could help in hiring a chief public defender and then they could develop the public defender program statewide. They would amend the commission to add one more member to the commission who would be a member of a Legislative interim committee. Section 7 of **SB 218** discusses salary and he asked for feedback to amend this section. When the appellate defender commission was created back in 1991, one of the things that was contained in the enabling legislation was a section that required an initial report to the Legislature and they would like to add this section. One of the jobs of the commission would be to prepare a report for the Legislature that talks about what they have done, how the public defender system is structured and fiscal and budget issues. He also discussed section 10 of **SB 218**.

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**Chief Justice Karla Gray, Supreme Court**, advised as they consider merging the appellate defender commission with a trial level indigent public defender commission to be careful of the conflict of interest issue. Whether they set the salary or whether the commission should decide it, they should keep in mind it will be difficult to fund this new set-up. She wondered if they had talked to the existing appellate commission to see if they were interested in a combined commission. She noted this commission has had some funding difficulties in the past.

**Gordon Morris, Montana Association of Counties**, said **SB 218** as originally drafted anticipated a combined trial and appellate defender commission. However, it went to legal review and there was a conflict of interest. The role of the appellate defender

commission is to provide legal defense on the basis of allegations that a public defender that was incompetent, etc. and the defendant ended up in Deer Lodge. The appellate side is appealing a trial court decision. There would be some efficiency by doing this and it is done in other states. He felt the commission could determine the issue of the salaries on the qualifications of the applicant.

**{Tape: 1; Side: A; Counter: 17.9}**

**SEN. WHEAT** asked if there was a different bill before **SB 218** that combined the two commissions.

**Mr. Morris** stated a bill goes through several drafts before it gets to a hearing. The initial bill draft had a combined commission and when it went to legal services they sent it back to be re-drafted.

**SEN. WHEAT** how they deal with the allegations of ineffective assistance of counsel wondered in other states that have combined appellate and trial public defense systems.

**Mr. Morris** indicated he did not know for sure.

**CHAIRMAN ESP** said they have determined the title of **SB 134** will not allow them to do much other than take district court costs and shift them back to the county. A committee bill would have to be drafted in order to deal with the issues.

**Lynn Zanto, Legislative Services**, discussed cost containment considerations, contingency funds and reporting of expenditures.  
**EXHIBIT (fcs36a02)**

**{Tape: 1; Side: A; Counter: 30.2}**

**CHAIRMAN ESP** said if they use some sort of county mechanism for the contingency funding it would have to be budgeted at the county level.

**SEN. WHEAT** said he did not understand how they were going to take the money from the user surcharge, which is earmarked for information technology.

**Ms. Zanto** said it would require a change in statute and probably the best mechanism would be to change it in HB 18.

**SEN. WHEAT** advised it is not so much the mechanism but how much of the money will be funneled away. If the surcharge is raised to

\$10 as proposed in HB 18, he wondered how much of that money would be funneled away from information technology.

**CHAIRMAN ESP** said none of it would be taken away, unless there was an overrun in the court and the contingency would be to use some of that money first.

**SEN. WHEAT** said they would use the additional surcharge as the fallback position within the court. He asked if the other fallback would be the counties.

**CHAIRMAN ESP** said they felt this would be enough contingency to handle any overruns in the court.

**SEN. DAN MCGEE** asked if they were satisfied on what the true costs were at the county level for all of the items contained in state assumption.

**SEN. MANGAN** advised the numbers based on the 2001 costs were approximately \$17.3M and they feel comfortable with those. He felt the major figures with the multipliers were fairly accurate. Those costs could be more but for right now he is comfortable with the numbers.

**SEN. MCGEE** contended they have identified all of the major cost factors from the counties. They want to shift those dollars that were going to the counties and use it for court assumption. If there is a shortfall, he does not want to go back to the counties and have them be the banker. If they are going to sever the responsibilities, he wants to sever it all so the counties are not expecting a bill from the state one day.

**SEN. MANGAN** said he is not a proponent of number 1 on the cost containment considerations. If they are going to go forward with state assumption, they need to fund it at the state level. They need to determine what those costs are and have them adequately funded. He does not think the fall back on the counties is the right way to go. By next session they should know what those costs are and be able to adequately fund this program.

**SEN. MCGEE** stated if they are going to do state assumption of the district courts, then the state should assume those costs. He felt that they have come a long way in identifying the categories and the costs that the counties have incurred up to 2001. He felt that those numbers could be used with inflation added and budget from there. He does not want the counties to be the bankers in the case of overruns.

*{Tape: 1; Side: B; Counter: 14.0}*

**SEN. MANGAN** advised in HB 18 the case has been made to remove the sunset and increase the fee for the Information and Technology (IT) fund. His only concern is using the IT funds for a contingency, because the need was addressed for the increase in the fee for IT. He does not want to leave a hole to fill another hole and perhaps they need to find other ways to fund this. With state assumption there are some IT needs to make it work and this is one reason for the increase in fees. He felt they needed to continue with cost containment mechanisms down the road. The most effective thing that can happen is those expenses will be tracked on SABHRS and they will have a better understanding of those costs vs. going through 56 different counties and hundreds of line items. Just having this data would assist the courts and the department. He reminded the committee again that they should be cautious in using the IT money for contingency.

*{Tape: 1; Side: B; Counter: 18.4}*

**CHAIRMAN ESP** asked **Lisa Smith, Supreme Court**, to comment.

**Ms. Smith** confirmed the numbers on the spreadsheet are the amounts reported by the counties. She did not confirm the accuracy of those numbers because she does not believe they have sufficient data on the state system to provide that confirmation. Her concern is that information statewide at the county level has not been reported consistently.

**CHAIRMAN ESP** asked if what they confirmed was the total cost as was reported, but that they needed to separate those costs out more to see if they were accurate.

**Ms. Smith** advised they confirmed the bottom line and some of the information was the same. They do not feel that the numbers truly reflect all the costs that exist.

**CHAIRMAN ESP** asked if they felt the variable costs were not fully reported.

**Ms. Smith** said she did not know.

**CHIEF JUSTICE KARLA GRAY, SUPREME COURT**, said she does not have a problem with the concepts of state assumption and the counties being off the hook as of June 30th of this year. She had no problem with the counties not being the fallback as long as her branch is adequately funded. She encouraged the committee to remember the judicial branch was given the obligation of managing SB 176. She asked how far they think it is appropriate to micro-manage and direct the district court council and require the staff of the judicial branch to do things. She referred to item

number 2 under the cost containment considerations. Notions that the Legislature had when they passed SB 176 might have been unrealistic. At the moment they have established a 60 percent reimbursement rate to the counties for indigent defense for this year with the counties in the fallback position. They couldn't set a rate at 60 dollars an hour because they are not paying the whole amount. In this fiscal year the counties have to pick up the difference. They cannot just set a \$60 rate for indigent defense and this is what item 2 reads. The reality is someone has to pay the whole bill. If they are going to truly assume these costs, they must realize that indigent costs cannot be contained in some artificial manner. Appointed council is a constitutional right and for the courts to limit this is unrealistic. There are constitutional rights at stake here and they cannot be short changed. She discussed item 3b which specifies a maximum rate for indigent defense and contended they cannot tell a lawyer they are going to take a murder case on a court appointed basis for \$400 or tell the defendant they don't get counsel as good as the prosecution side. They cannot set a statutory limit for such items.

**{Tape: 2; Side: A; Counter: 3.0}**

**CHAIRMAN ESP** advised the premise is to get ideas. He noted in section 2 it says "similar to" and they are not necessarily going to do that.

**Chief Justice Gray** encouraged them not to use language that includes the "district court council must report." They are in a different place internally and it is uncomfortable for a different branch to be overly directed by the Legislature. They will do whatever reasonable reporting they are asked to do, but they are already understaffed and if it becomes too much then it is a problem. With every layer of reporting there is more work and they would need more resources.

**SEN. MANGAN** asked the **Chief Justice** about her opinion of the increase of the surcharge for IT expenses in HB 18 where and if a contingency fund could be established, etc.

**Chief Justice Gray** said HB 18 addresses a critical need. If they didn't need the money they would not have put in for it and they do not like surcharges. They requested \$10 because that is the base amount to move forward with their IT plan. She said she can not conceive how they could move money from a special revenue fund for IT on which no money came over with state assumption and use it for any other purpose. That is what they need for IT. Information Technology on a branch wide basis is not a throwaway.

*{Tape: 2; Side: A; Counter: 10.1}*

**SEN. MCGEE** said they are approaching transmittal deadline and **SB 134** is a general bill; he would like to put in some type of a minor fee to turn it into a revenue bill as this would buy them some time. He would look at a revenue amendment for the bill.

**SEN. LINDA NELSON, SD 49, Medicine Lake,** said if they are going to do a committee bill the deadline is almost here.

**CHAIRMAN ESP** said revenue committee bills could be drafted later than general bills.

**SEN. MCGEE** said they could put in revenue of \$1 and make it a revenue bill.

**CHAIRMAN ESP** said he would like to meet with **Chief Justice Gray** and **Ms. Smith** to discuss some of the policy issues.

**SEN. MANGAN** said they should also do a fee in **SB 218** so they don't miss transmittal.

**ADJOURNMENT**

Adjournment: 6:26 P.M.

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SEN. JOHN ESP, Chairman

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PRUDENCE GILDROY, Secretary

JE/PG

**EXHIBIT (fcs36aad)**